

compensation purposes, or at 75 percent when there is a dependent (see § 10.301(b) of this section).

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§ 10.303 Partial disability rate.

(a) An injured employee who is unable to return to the position held at the time of injury (or to earn equivalent wages) but who is not totally disabled for all gainful employment is entitled to compensation computed on loss of wage-earning capacity. Compensation for partial disability is payable at 66⅔ percent (or at 75 percent if the employee has a dependent) of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. A narrative description of the formula used by the Office to compute the compensation payable is contained in paragraph (b) of this section. In determining the compensation payable for partial disability, an employee's wage-earning capacity is determined by the employee's actual earnings if those earnings fairly and reasonably represent the wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or if the employee has no actual earnings, the employee's wage-earning capacity shall be determined by the Office by selection of a job after having given due regard to the nature of the employee's injury, the degree of physical impairment, the employee's usual employment, the employee's age, the employee's qualification for other employment, the availability of suitable employment, and other factors or circumstances which may affect the employee's wage-earning capacity in his or her disabled condition. The salary of such a job shall be considered the employee's wage-earning capacity. The Office will not secure employment for the claimant in the position selected for establishing an earning capacity.

(b) For the purpose of describing the formula utilized by the Office for computing the compensation payable for partial disability, the following terms are defined: pay rate for compensation purposes is as defined in § 10.5(a)(20) of this part; current pay rate means "current" salary or pay rate for the job

held at the time of injury; and earnings means the claimant's actual earnings, or the salary or pay rate of the job selected by the Office as representative of the employee's wage-earning capacity. An employee's wage-earning capacity in terms of percentage is obtained by dividing the employee's earnings by the current pay rate. The comparison of earnings and "current" pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. Any convenient date may be chosen by the Office for making the comparison as long as the two wage rates are in effect on the date used for comparison. The employee's wage-earning capacity in terms of dollars is computed by multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity and the resulting dollar amount is subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity. Compensation for partial disability is payable at the rate of 66⅔ percent (or at 75 percent if the employee has a dependent) of this loss of wage-earning capacity. The compensation payable shall be increased by applicable cost-of-living adjustments.

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§ 10.304 Schedule compensation rate.

(a) Compensation is provided for specified periods of time for the permanent loss or loss of use (referred to as impairment) of each of certain members, organs and functions of the body. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. The compensation for scheduled awards will equal 66⅔ percent of the employee's pay or 75 percent of the pay when there is a dependent. Compensation for loss of wage-earning capacity may be paid after the schedule expires. Proper and equitable compensation not to exceed \$3,500 may be paid for serious disfigurement of the face, head or neck if of a character likely to handicap a person in securing or maintaining employment.

(b) Authority is provided under 5 U.S.C. 8107(c)(22) to add other internal